

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORKUSDC-SDNY
DOCUMENT
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UNITED STATES OF AMERICA

v.

MUSTAFA OZSUSAMLAR,

Defendant.

No. 05-CR-1077-1 (RA)

ORDER

RONNIE ABRAMS, United States District Judge:

On November 15, 2021, the Court received a letter from Mr. Ozsusamlar. Dkt. 195. In the letter, he seeks to correct purported “clerical mistakes and error” from his 2007 sentencing. Of the various federal rules of criminal procedure that Mr. Ozsusamlar cites in the letter, the only arguably applicable ones are Rule 32, Rule 35, Rule 36, and Rule 52(b). The Court considers any potential argument that might flow from each of these rules. *See Graham v. Henderson*, 89 F.3d 75, 79 (2d Cir. 1996) (courts interpret filings by pro se litigants to “raise the strongest arguments that they suggest”).

Mr. Ozsusamlar cites Federal Rule of Civil Procedure 32’s requirement that “[b]efore imposing sentence, the court must . . . address the defendant personally in order to permit the defendant to speak or present any information to mitigate the sentence.” Fed. R. Crim. P. 32(i)(4)(A)(ii); *see Hill v. United States*, 368 U.S. 424, 426 (1962) (discussing an earlier version of this rule and explaining that it “requires a district judge before imposing sentence to afford every convicted defendant an opportunity personally to speak in his own behalf”). The sentencing transcript, which the Court attaches to this Order, makes clear that Judge Leisure did so. Sentencing Transcript at 16, 24. Accordingly, any Rule 32 argument Mr. Ozsusamlar raises is unmeritorious.

Federal Rule of Criminal Procedure 35 provides that “[w]ithin 14 days after sentencing, the court may correct a sentence that resulted from arithmetical, technical, or other clear error.” Fed. R. Crim. P. 35(a). Because far more than 14 days have passed since Mr. Ozsusamlar was sentenced in 2007, any argument under Rule 35 is untimely.

Rule 36 states that “[a]fter giving any notice it considers appropriate, the court may at any time correct a clerical error in a judgment, order, or other part of the record, or correct an error in the record arising from oversight or omission.” Fed. R. Crim. P. 36. The Court observes no clerical error in the sentence or any other error in the record. Finally, Rule 52(b) states that “[a] plain error that affects substantial rights may be considered even though it was not brought to the court’s attention.” Fed. R. Crim. P. 52(b). The Court finds no such plain error here.

Although Mr. Ozsusamlar’s letter is largely characterized as a Rule 35 motion—which, again, would be untimely—some of his arguments appear to deviate from that Rule or any other Rule. Namely, Mr. Ozsusamlar seems to allege that he is currently being held past the end date of the sentence imposed by Judge Leisure. He asserts that at sentencing, Judge Leisure stated that Mr. Ozsusamlar’s sentence would begin to run as of the date of his indictment in that case. Mr. Ozsusamlar contends that based on this oral ruling, he completed his sentence 30 months ago because he was indicted on October 5, 2005.

The relevant colloquy from the sentencing transcript reads as follows:

MR. SIEGEL: Your Honor, the defendant has a technical question and the defendant would like to know when for computation purposes, when does your sentence begin to run? Does it run from when the crime occurred, which was sometime in October, September-October 2005, or does it run or commence from a later time?

THE COURT: It may well be that as soon as he was arrested and he was in custody the time started to run. Maybe the government can tell us.

MS. ROCAH: Obviously this is a calculation that the Bureau of Prisons will do and I suppose if the defendant has objections to their calculations he can raise it then since sitting here now we don’t know what it will be. It’s something done by the

Bureau of Prisons. But my understanding is he was in custody on the previous conviction and so I am not sure if he would have received credit yet on this sentence but I don't really want to speculate because it's a Bureau of Prison's calculation.

Sentencing Transcript at 43. Although Mr. Ozsusamlar suggests that the sentencing transcript has been "altered," he gives no legitimate reason for the Court to suspect that this transcript does not accurately represent what was stated at sentencing. And on the plain face of the transcript, Judge Leisure did not say that the sentence began to run at indictment or at arrest; he deferred to the Government on that question, and the Government rightly responded that this determination was within the province of the Bureau of Prisons. *See, e.g., Cintron v. Warden, F.C.I. Otisville*, 52 F. Supp. 3d 654, 655 (S.D.N.Y. 2014) ("It is the responsibility of the BOP, rather than the courts to determine the commencement of a federal sentence and calculate any credit toward that sentence for time already served."); *United States v. Labeille-Soto*, 163 F.3d 93, 98 (2d Cir. 1998) (same). Mr. Ozsusamlar gives the Court no reason to infer that the BOP's calculation of his sentence, including its date of commencement and any calculation of credit, is inaccurate.¹

Accordingly, Mr. Ozsusamlar's motion is denied. The Clerk of Court is respectfully directed to mail a copy of this order to Mr. Ozsusamlar.

SO ORDERED.

Dated: December 9, 2021
New York, New York



Ronnie Abrams
United States District Judge

¹ Mr. Ozsusamlar also invokes *United States v. Quintana-Gomez*, 521 F.3d 495 (5th Cir. 2008), in which the Fifth Circuit held that a district judge does not have the "authority to order that its sentence run consecutively to an anticipated but not-yet-imposed federal sentence." *Id.* at 498. But Mr. Ozsusamlar's prior sentence had already been imposed by then-Chief Judge Wood when he was sentenced in the instant case. Sentencing Transcript at 38. Finally, he argues that Judge Leisure erred in stating that the applicable criminal history category was IV, citing to paragraph 68 of his presentence investigation report. But paragraph 68 of the report does assign a criminal history category of IV, *see* Presentence Investigation Report (filed with the Court), a calculation to which Mr. Ozsusamlar did not object at sentencing. *See* Sentencing Transcript at 9-10.

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

4 UNITED STATES OF AMERICA,

5 v.

05 Cr. 1077

6 MUSTAFA OZSUSAMLAR,

7 Defendant.

8 -----x
9 November 8, 2007
10 10:15 a.m.

11 Before:

12 HON. PETER K. LEISURE,

13 District Judge

14 APPEARANCES

15 MICHAEL J. GARCIA
16 United States Attorney for the
17 Southern District of New York
18 MIRIAM ROCAH,
19 Assistant United States Attorney

20 MARTIN J. SIEGEL, ESQ.
21 Standby Attorney for Defendant

22 INTERPRETERS: A.J. ELTERMAN
23 ASIYE KAY

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1 (Case called)

2 THE COURT: We will swear in the interpreters.

3 (Interpreters sworn - A.J. ELTERMAN and ASIYE KAY)

4 THE COURT: As I have done in the past with the cases
5 by the father and son, Osman, I have made a summary statement
6 because I think it's helpful to the higher court, and also
7 different issues have been raised by the father and son. There
8 are some similarities but it's important to keep them separate
9 for considerations at sentencing and other matters that we have
10 had to come up.

11 So I am going to do the same thing here before I hear
12 from the parties. Although the background of this case has
13 been well covered at numerous post-trial conferences that we
14 have had following the conviction by a jury, I will summarize
15 the events that have led up to today's sentencing.

16 On April 20, 2006 a jury convicted Mustafa Ozsusamlar,
17 who I will refer to as either Mustafa or the defendant in this
18 proceeding, and his son, Osman Ozsusamlar, who I will refer to
19 as Osman, of conspiracy to commit a murder for hire and the
20 substantive crime of murder for hire in violation of 18 U.S.C.
21 Section 1958, and conspiracy to commit extortion in violation
22 of 18 U.S.C. Section 1951.

23 I want to ask the interpreters to tell me if I am
24 moving too quickly.

25 I know the defendant speaks English and occasionally

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1 he has responded in English but at the same time he has
2 requested that we have translations and that he have an
3 opportunity to speak in Turkish, as he deems appropriate, or in
4 English, and we will accommodate him.

5 Mr. Siegel, who is standby counsel, has conversed with
6 him in English but he has used the interpreter when he deemed
7 it appropriate.

8 All three counts were charged in a superseding
9 indictment filed on January 4, 2006. As I said, the defendants
10 are father and son. Mustafa is the father and Osman is the
11 son. Mustafa is before the court today for sentencing.

12 The events underlying the charges took place between
13 August 2005 and October 2005. The case involved a man who owed
14 approximately \$283,000 to the two defendants. Mustafa, while
15 incarcerated at the Metropolitan Correctional Center (the
16 "MCC") pending sentencing following his conviction in a
17 separate case, asked a fellow prisoner -- who was a cooperating
18 witness ("CW") -- if he knew of someone who could collect the
19 debt, by force if necessary, and kill the man, and possibly
20 also his wife, after the debt was collected. Mustafa offered
21 to pay the killer 10 percent of the money collected. After the
22 CW informed the government of Mustafa's request, the government
23 arranged for an undercover agent (the "Agent") named "Joe" to
24 pose as a collector/hit man. The CW provided the agent's
25 information to Mustafa.

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Mustafa, via phone, directed Osman to contact the agent. Osman did so, and arranged a meeting at which the two discussed the details of the scheme. Some time later, the agent called Osman to tell him that he had collected the debt and carried out the scheme. Osman and the agent made arrangements to meet, and Osman was arrested when he arrived at the agreed-upon location. Mustafa was arrested the next morning. The intended victims were not harmed.

Subdivision II. Post trial activities.

Following the verdict, while still represented by his trial counsel, Barry Turner, Esq., Mustafa sent numerous communications directly to the court regarding his representation as well as his concerns about and challenges to the jury verdict. Based on Mustafa's written requests, the court held conferences on August 26, 2006, March 20, 2007, April 4, 2007, and June 5, 2007 to discuss his concerns. At the April 4, 2007 conference, the court granted Mustafa's request to proceed pro se. Martin J. Siegel, Esq., who is here today, from the Criminal Justice Act panel currently serves as Mustafa's standby counsel.

On June 5, 2007, the court granted Mustafa's request for a hearing in order to place on the record evidence regarding certain of Mustafa's pro se motions, including a request for a judgment of acquittal pursuant to Rule 29 of the Federal Rules of Criminal procedure, for a new trial pursuant

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1 to Rule 33 of the Federal Rules of Criminal procedure, and more
2 dismissal of the charges against him pursuant to Rule 12(b)(2)
3 of the Federal Rules of Criminal procedure. That hearing was
4 conducted on August 14, 2007. By opinion and order dated
5 September 20, 2007, Mustafa's motions were denied.

6 The Pre-Sentence Report ("PSR") for Mustafa was
7 prepared on January 23, 2007 and revised on February 21, 2007.
8 The revision reflected that on January 29, 2007, Mustafa was
9 sentenced to 235 months imprisonment by Chief Judge Kimba M.
10 Wood in a separate criminal case. Through his standby counsel,
11 Mustafa submitted his sentencing memorandum on October 9, 2007.
12 The government briefly responded on October 10, 2007 in order
13 to clarify the record as it related to some of Mustafa's
14 objections. Mustafa submitted another sentencing-related
15 letter dated October 19, 2007, to which the government did not
16 respond.

17 Sub-heading III. Sentencing Post-Booker.

18 I will now turn to the sentencing of the defendant
19 based on the submissions made by the parties. First, I will
20 discuss the factors that I am required to consider in
21 determining your sentence.

22 As a result of two opinions issued in 2005, the
23 sentencing guidelines are no longer mandatory. *United States*
24 v. *Booker*, 534 U.S. 220, 243-44 (2005); see *United States v.*
25 *Fernandez*, 443 F.3d 19, 26 (2d Cir. 2006). Today, "pursuant to

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1 the remedy opinion, the now advisory guidelines are to be
2 considered, together with the other factors set forth in 18
3 U.S.C. Section 3553(a), by judges fashioning sentences."
4 Fernandez, 443 F.3d at 26. The Second Circuit has articulated
5 the following steps for a sentencing court to follow: "A
6 sentence will satisfy the requirements of Booker and the Sixth
7 Amendment if the sentencing judge (1) calculates the relevant
8 guidelines range, including any applicable departure under the
9 guidelines system; (2) considers the calculated guidelines
10 range, along with the other Section 3553(a) factors and (3)
11 imposes a reasonable sentence." Id.

12 Subdivision A, calculation of the guidelines range.

13 In *United States v. Crosby*, 397 F.3d 103, 112 (2d Cir.
14 2005), the Second Circuit instructed sentencing courts that
15 "the applicable guidelines range is normally to be determined
16 in the same manner as before Booker/Fanfan." Thus, as was the
17 case before Booker, facts relied on in sentencing need only be
18 proven by a preponderance of the evidence. See *United States*
19 v. *Vaughn*, 430 F.3d 518, 525 (2d Cir. 2005) (Sotomayor, J.)
20 (noting that in the Second Circuit "judicial authority to find
21 facts relevant to sentencing by a preponderance of the evidence
22 survives Booker," and finding that "district courts remain
23 statutorily obliged to consider the guidelines in the same
24 manner as before Booker") (quotations and citations omitted).

25 Subdivision B. Consideration of the guidelines range

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1 and the Section 3553(a) factors.

2 While usually "a guidelines sentence will fall
3 comfortably within the broad range of sentences that would be
4 reasonable in the particular circumstances," the Second

5 Circuit -- in accord with other courts of appeals -- has
6 "declined to establish any presumption, rebuttable or
7 otherwise, that a guidelines sentence is reasonable."

8 Fernandez, 443 F.3d at 27. Consequently, a district court is
9 required to "consider" the advisory guidelines range, an

10 inquiry that is impossible to define and, thus, better left to
11 the discretion of the sentencing judge. Crosby, 397 F.3d at

12 113 ("we think it more consonant with the day-to-day role of
13 district judges in imposing sentences and the episodic role of
14 appellate judges in reviewing sentences, especially under the
15 new applicable standard of reasonableness, to permit the

16 concept of consideration in the context of the applicable
17 guidelines range to evolve as district judges faithfully
18 perform their statutory duties.").

19 The Second Circuit recently held that such
20 consideration does not include a "requirement that a sentencing
21 judge precisely identify either the factors set forth in
22 Section 3553(a) or specific arguments bearing on the
23 implementation of those factors in order to comply with its
24 duty to consider all the Section 3553(a) factors along with the
25 applicable guidelines range." Fernandez, 443 F.3d at 29;

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1 accord United States v. Flemming, 397 F.3d 95, 100 (2d Cir.
2 2005) (Newman, J.) ("as long as the judge is aware of both the
3 statutory requirements and the sentencing range or ranges that
4 are arguably applicable, and nothing in the record indicates
5 misunderstanding about such materials or misperception about
6 their relevance, we will accept that the requisite
7 consideration has occurred.").

8 While a sentencing judge is not required to articulate
9 its consideration of each and every Section 3553(a) factor, the
10 Second Circuit has made clear that it "continues to encourage
11 sentencing judges to facilitate our review by providing
12 complete and detailed explanations regarding their sentencing
13 decisions." Fernandez, 443 F.3d at 31 n.8; Crosby, 397 F.3d
14 at 116 ("district judges will, of course, appreciate that
15 whatever they say or write in explaining their reasons for
16 electing to impose a guidelines sentence or for deciding to
17 impose a non-guidelines sentence will significantly aid this
18 court in performing its duty to review the sentence for
19 reasonableness.").

20 The Section 3553(a) factors are:

21 1. The nature and circumstances of the offense and
22 the history and characteristics of the defendant;

23 2. The need for the sentence imposed to reflect the
24 seriousness of the offense, to promote respect for the law, to
25 provide just punishment for the offense, to afford adequate

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1 deterrence to criminal conduct, to protect the public from
2 further crimes of the defendant, and to provide the defendant
3 with needed educational or vocational training, medical care,
4 or other correctional treatment in the most effective manner;

5 3. The kinds of sentences available;

6 4. The kind of sentence and the sentencing range
7 provided for by the sentencing guidelines;

8 5. Any pertinent policy statement issued by the
9 Sentencing Commission;

10 6. The need to avoid unwarranted sentence disparities
11 among defendants with similar records who have been found
12 guilty of similar conduct; and,

13 7. The need to provide restitution to any victims of
14 the offense.

15 18 U.S.C. Section 3553(a).

16 Subdivision paragraph IV. The parties' proposals to
17 the court.

18 I will now address the PSR and Mustafa's October 9 and
19 October 19 sentencing memoranda. As I stated earlier, the
20 government did not submit a sentencing memorandum, but only
21 responded to a few of Mustafa's objections in order to clarify
22 the record.

23 Subdivision A. Probation.

24 Probation determined that Mustafa's criminal history
25 category was IV and calculated his total offense level to be

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1 33.

2 Mustafa's criminal history category was determined by
3 the sum of his criminal history points. Under U.S.S.G. Section
4 4A1.1A, any prior sentence exceeding one year and one month
5 equals 3 points. Mustafa had two such sentences, one in 1995
6 and the other in 2007, yielding 6 criminal history points.
7 Additionally, under U.S.S.G. Section 4A1.1D, 2 points were
8 added because Mustafa committed the instant offense while
9 imprisoned. Accordingly, Mustafa had a total of 8 criminal
10 history points, placing him in criminal history category IV.

11 Probation's calculation of the offense level of 33 was
12 based on their grouping of the counts into two groups.
13 Specifically, pursuant to Section 3D1.2 of the guidelines,
14 which allows for the grouping of counts with substantially the
15 same harm, Counts 1 and 2 -- conspiracy to commit murder for
16 hire and murder for hire in violation of 18 U.S.C. 1958 -- were
17 grouped together into "Group One." The base offense level for
18 these counts was calculated based on Section 2E1.4 of the
19 guidelines, which provides for a base offense level of 32.

20 The remaining Count 3 (conspiracy to commit extortion
21 in violation of 18 U.S.C. 951) is its own group, "Group Two."
22 The base offense level for this count was calculated based on
23 U.S.S.G. Section 2B3.2, which provides for a base offense level
24 of 18. While there were no adjustments recommended for Group
25 One, leaving the total offense level at 32, probation

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1 recommended 3 enhancements to the Group Two base offense level
2 for specific offense characteristics:

3 1. An increase by two levels because the offense
4 involved an expressed or implied threat of death, bodily
5 injury, or kidnapping. U.S.S.G. Section 2B3.2B1;

6 2. An increase of 3 levels because the amount
7 demanded was more than \$250,000 but less than \$800,000.
8 U.S.S.G. Section 2B3.1B7D; and,

9 3. An increase of three levels because the offense
10 involved preparation to carry out a threat of death. U.S.S.G.
11 Section 2B3.2(3)(B)(I).

12 Accordingly, the total offense level for Group Two is
13 26. Probation then determined the combined offense level
14 pursuant to U.S.S.G. Section 3D1.4. According to the
15 calculation, Group One counts as one unit, and Group Two counts
16 as one half unit. This results in a combined offense level of
17 33.

18 The resulting guidelines range for criminal history
19 category IV and an offense level of 33 is 188-235 months.
20 Probation recommends a sentence of 188 months imprisonment.
21 Probation also recommends that this sentence be followed by 3
22 years of supervised release. Notably, probation states that,
23 pursuant to Section 5G1.3 of the guidelines, this sentence must
24 run consecutively to the 235 month sentence imposed by Chief
25 Judge Wood in United States v. Ozoglu et al., 02 Cr. 763.

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1 Finally, probation recommends waiving the fine because Mustafa
2 is subject to a \$20,000 fine imposed by Chief Judge Wood.
3 Probation believes this sentence adequately reflects the
4 serious nature of the defendant's offense, and would
5 sufficiently further the criminal justice system's objectives
6 of punishment and deterrence.

7 Subdivision B. Mustafa.

8 Mustafa submitted a memorandum to the court dated
9 October 9, 2007, listing 26 objections to the PSR. As the
10 government notes in its response, the vast majority of
11 Mustafa's submission consists of "attempts to reargue the trial
12 evidence." Other objections have no bearing on Mustafa's
13 sentencing. For the record, the court notes that paragraph 9
14 of the PSR should be clarified to state that, after a jury
15 conviction on a variety of charges, District Judge Debevoise
16 entered a judgment of acquittal on those charges related to
17 hostage-taking. Further, that same paragraph should state that
18 Mustafa's 1995 conviction actually took place in May, and not
19 in September. Paragraph 64 of the PSR should read that Mustafa
20 was convicted on May 14, 2004. Mustafa does make two arguments
21 related to his sentence. First, he asks the court to "sentence
22 the defendant to a term that reflects that no one was actually
23 threatened, harmed or injured." (Defendant's 10/9 memo at 4.)
24 Second, he urges the court to impose a concurrent sentence to
25 Chief Judge Wood's 235-month sentence. (Id.)

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Mustafa's second submission to the court, dated October 19, 2007, rehashes arguments he has already raised following trial. Namely, Mustafa argues that evidence used in his trial was fabricated, altered and hidden, witnesses were hidden and tainted by the government, and transcripts from the trial were altered. (Defendant's 10/19 memo at 1-4.) This court generally addressed these issues in an opinion and order on September 20, 2007, finding Mustafa's claims to be wholly without merit. Of course, Mustafa may argue these points in an appeal to the Second Circuit Court of Appeals, but they have already been disposed of here, and are thus not pertinent to today's sentencing. Mustafa's October 19 letter does raise two points related to sentencing. First, defendant requests a departure for giving substantial assistance to the authorities. He states that he "provided the government with evidence that helped in arresting and convicting people involved in crime" (Id. at 5.) Second, defendant asks the court to consider his community service. Specifically, Mustafa leads prayer services for fellow inmates, donated funds to the Turkish education department to construct a school, and served as mayor of a town in Turkey from 1970 to 1974. (Id..)

I am going to take a ten-minute recess at this point and then I am going to hear from the parties when we come back with anything that they wish to add.

We will take a ten-minute recess.

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1 (Recess)

2 THE COURT: Another advantage of a recess before
3 continuing, it allows me to review my notes and I do see an
4 error I made where I indicated that the sentence before Chief
5 Judge Wood consisted of a fine of -- and I said \$200,000 and it
6 was \$20,000. So I make that correction for the record. I
7 think probably the reporter picked it up when I was going
8 through it.

9 Now, I think it's a good time to hear from both sides
10 before I actually calculate the sentence with regard to this
11 guidelines range. So before I make that determination, I might
12 ask standby counsel first whether he has anything he wishes to
13 add.

14 MR. SIEGEL: Good morning, your Honor.

15 If it please the court, I think the defendant will be
16 addressing court in detail as far as certain issues. The only
17 thing I would like to raise is, number one, that you recommend
18 to the Bureau of Prisons that he be confined to a facility as
19 close to New York as possible and, in addition, if he can be in
20 the same facility as his son is. That would be one
21 recommendation.

22 Just on the issue of the concurrent versus the
23 consecutive, the Pre-Sentence Report makes reference for
24 authority to a guidelines provision. However, I do not believe
25 that such a requirement is found in the statute, such as in

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1 924(c), a violation would require by statute a mandatory
2 consecutive sentence. I think on the offense here calling for
3 a consecutive sentence, they make reference to a guidelines
4 statute and as the court is aware the guidelines are advisory
5 versus being mandatory, such as the statutory provision. So my
6 only comments would be what I submitted to the court is
7 whatever sentence the court imposes and I think the Probation
8 Department recommended on two counts 120 months to run
9 concurrent with a sentence of Count 3 of 188 months. The only
10 thing I would ask is that that sentence run concurrent with
11 that of Judge Wood's.

12 And the defendant would like to address the court,
13 your Honor.

14 THE COURT: Let's me give the government a chance to
15 consider what you are saying. They might want to comment on
16 it.

17 I have given consideration prior to our coming down
18 here today with regard to what you are raising and why don't we
19 see how I handle it, and then I will hear from both sides at
20 this that point.

21 MR. SIEGEL: And just for the record, I am referring
22 to page 21 of the report, the second paragraph, where it reads
23 pursuant to Section 5G1.3A the instant offense must run
24 consecutive to the undischarged term of imprisonment, and again
25 5G1 is not a statute but it's a guidelines provision.

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1 THE COURT: Well, the government can be considering
2 your comments and hear what I have to say when I have further
3 dialogue on it.

4 Now I will hear from Mustafa before I impose sentence.

5 Any comment?

6 THE DEFENDANT: Yes, your Honor. I have eternal
7 unlimited respect to the honorable judge in this court. Your
8 Honor, whether your judgment will be in my favor or against me,
9 I believe that your decision will reflect the human rights
10 facts of this country and given the background, your own
11 conscientiousness and your long years of service as a judge,
12 and that you will be doing this with a peace of mind, and I
13 trust that. Your Honor had already mentioned that I should
14 bring forth certain statements that might have impact in the
15 future in my case, for the future, so I would like to in
16 particular mention something pertaining to the CDs that you had
17 pointed out that I can do that.

18 If possible I would like to propose that as attorney
19 for the appeals, attorney Elizabeth Fink, should be appointed.

20 THE COURT: The name is Finkelstein, is that correct?

21 MR. SIEGEL: It's Elizabeth Fink, your Honor.

22 THE DEFENDANT: The address is 13 Gaye Street, New
23 York, New York 10014.

24 THE COURT: Is she on the CJA panel?

25 MR. SIEGEL: I think Ms. Fink is on the panel, your

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1 Honor.

2 THE COURT: I will be hearing from the government not
3 at this moment on it but the government will comment at any
4 time they wish to with regard to any of these matters that are
5 being raised at this point or after I impose the sentence. So
6 I will leave it up to the government. Some of these matters
7 are to be considered after the sentence, I suppose.

8 THE DEFENDANT: Your Honor, my second request, if
9 possible I would like to have detectives assigned to do some
10 research and investigation pertaining to my case.

11 My third request is that after my sentence has been
12 spoken that my sentence be served, that I serve my sentence at
13 least 5 to 6 months in the prison that I am presently in and
14 the reason for this is, your Honor, is because I have four
15 separate cases, two of which are in the Southern District and
16 two of which are civil cases and in order to pursue them I need
17 to be close to this area.

18 THE COURT: I can make recommendations to the Bureau
19 of Prisons and they often follow my recommendations, but the
20 final decision with regard to where you are placed is the
21 Bureau of Prison's decision and they will certainly extend
22 every courtesy to the court, but they make the final decision.
23 But the government may have something to add too.

24 Please continue.

25 THE DEFENDANT: I can see that your Honor has already

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1 mentioned the points that I wanted to mention here. The sealed
2 record of the CD dated September 18, 2005 was mailed to me by
3 the judge two weeks ago. This CD was shown to the jury as
4 Government Exhibit 21 as a sealed evidence, a sealed exhibit.

5 THE COURT: In which case are you talking about it was
6 shown to the jury, is it my case or someone else?

7 THE DEFENDANT: This case, your Honor.

8 THE COURT: You are saying that Government Exhibit 21
9 used in the case before me was shown to the jury?

10 THE DEFENDANT: Yes.

11 THE COURT: And what is your point? What are you
12 requesting me to do about that?

13 THE DEFENDANT: It is evident here that this sealed
14 document was not taken into seal and for 160 days it was under
15 seal.

16 THE COURT: Do you understand what his grievance is?
17 I ask the government counsel.

18 MS. ROCAH: No, your Honor, I don't.

19 THE COURT: I don't understand.

20 MR. SIEGEL: Your Honor, I think there was an issue
21 when a CD was taken, and I think his position is that one of
22 the CDs that was used at trial I think the defendant contends
23 that there was a hiatus of 160 days from when the recording was
24 made to when it was placed under seal.

25 Is that correct?

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1 THE DEFENDANT: Yes.

2 MR. SIEGEL: And I think the defendant's position,
3 your Honor, is that during that 160-day period that the CD was
4 tampered with and therefore it was corrupted.

5 THE COURT: This goes to tampering, an issue which he
6 has already raised.

7 Does the government have anything to add to that? Do
8 you need more time to consider it?

9 MS. ROCAH: No, your Honor, I will address it.

10 THE COURT: All right. The government will respond
11 before we leave here today.

12 THE DEFENDANT: The judge permitted \$4,000 to be used
13 for the forensic testing of the CD. There was an amount of
14 \$3200 paid to the effect that the forensic test was done but
15 there is no report that we have in our hand and here it doesn't
16 show anywhere that it went to forensic testing. Why was this
17 money paid? This is the government's duty to find out if
18 somebody is stealing this money.

19 THE COURT: Does the government understand what his
20 grievance is?

21 MS. ROCAH: Your Honor, I think the defendant is
22 referring to this envelope that the CD was contained in, the
23 FBI envelope in which the CD had been contained which has some
24 dates on it. Basically every time the CD is taken out of the
25 sealed envelope it's logged in and out by the agent taking it

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1 in and out and he seems to be referring to the fact that there
2 is no indication on that FBI envelope about the test or the CD
3 being sent for forensic testing. That is the best I can
4 understand what he is saying.

5 I don't think there would be any indication on that
6 envelope of a CD being sent to forensic testing since it's not
7 the government who sent it. It was something requested by the
8 defendant and we never had anything to do with any kind of
9 forensic testing. We never sent anything for forensic testing.
10 We never got a report. It's just not something the government
11 is involved with.

12 THE COURT: It's something that should have been
13 raised during the trial rather than sentencing.

14 MS. ROCAH: Yes.

15 THE COURT: So he is raising it today but, in any
16 event, as I have said before he can raise on appeal these
17 issues, but I have done the best I can to explain to him. He
18 doesn't seem to listen to his lawyers, which has been part of
19 of his problem, and he continues to be taking positions which
20 don't necessarily make sense. But, in any event, we must move
21 ahead.

22 What else have you got to say here today?

23 THE DEFENDANT: This is not a position or some kind of
24 opinion that I am mentioning but I received it two weeks
25 before.

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1 THE COURT: You should have taken it up with your
2 lawyer. You are now your own lawyer, so I am hearing you but I
3 think you are wasting time.

4 Let's move ahead.

5 What else have you got to raise here today?

6 THE DEFENDANT: There is a certain point I would like
7 to mention.

8 At the hearing on August 14 there was a T-Mobile
9 telephone bill that I showed here, 973, 650, and also a
10 telephone with a number 5806. I showed this telephone bill
11 here to the court but when I went to the Marshals Service it
12 was taken away from my file. Who took it, I don't know.

13 Another point I would like to make, your Honor, is
14 that the address of 349 12th Avenue in Paterson, New Jersey, my
15 son Osman lives at his home on the third floor -- I am sorry,
16 at the same address with Osman, my other son, Ramazan lives on
17 the third floor. The garage door to this home was broken and
18 there was a search undertaken, performed there. Two weeks
19 later, two weeks after that the door to the basement was broken
20 and the inside was searched. Again, two weeks later again the
21 third floor door was opened and someone went inside. Only
22 written documents, family photographs and CDs were taken. And
23 the camera was removed, taken away, removing it out of its
24 case, and the door was locked again and the people left.

25 When a thief comes into someone's home they steal

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1 articles, goods, they don't steal written documents and they
2 don't take a camera removing it from its case. They take it
3 together with the case.

4 This is something that was done by Campanella and the
5 staff working at his office. We think, we guess, that this was
6 done by them in order to eliminate evidence. At the MDC, the
7 prison where I serve my sentence, my CDs were eliminated or
8 destroyed, disappeared, and the CDs of my son were taken away
9 and exchanged with other ones, replaced with other ones.

10 The fact that these things have been done, and apart
11 from that my son Ramazan is under pressure by people working at
12 Campanella's office. A person like my son may have committed
13 an offense, possibly, but New Jersey is a different state.
14 There is a judge, a prosecutor, police and FBI there. Instead
15 of all these authorities getting involved, why is Campanella's
16 office getting involved and pursuing this? Why do they feel
17 the need to question, interrogate somebody who has his full
18 civil liberties under pressure?

19 Where are the human rights? Where is democracy?
20 Where is liberty?

21 THE COURT: Let me hear from the government. I don't
22 know whether he is raising again matters he has already raised
23 or whether these are the first time that he has voiced these
24 additional items. We know we have been dealing with him over
25 the period of time and that is the reason the sentencing has

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1 been delayed as long as it has been and I held conferences, as
2 I indicated, at the beginning of these proceedings to address
3 his concerns and we tried to keep up with his unending
4 complaints and criticisms.

5 Are these being raised for the first time today as far
6 as the government is concerned?

7 MR. SIEGEL: Your Honor, if I can just relate what the
8 defendant's position is because he told me about this the other
9 day when I met with him at the MDC. Apparently he feels there
10 is a major conspiracy going on which is being directed by
11 Special Agent Jack Campanella against the defendant and his
12 family and his position is that Special Agent Campanella is
13 directing this group of people to go in, search his home on
14 other occasions, to basically try to coerce his son into
15 violating the law. He also feels Special Agent Campanella had
16 advised the marshals to remove certain documents from his file
17 after the last court appearance because they felt or Special
18 Agent Campanella felt these documents may have been
19 advantageous to his case. And while he was in the marshals'
20 lock-up apparently Special Agent Campanella or Ms. Rocah or
21 someone else from the prosecutorial team directed the marshals
22 to remove items from his legal file.

23 I think that is what the defendant is alleging, your
24 Honor.

25 THE COURT: Let me hear from the government.

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1 MS. ROCAH: Your Honor, I hesitate to say that these
2 have never been raised before only because the defendant has
3 previously raised just about every conceivable claim he could
4 raise. So I think in some form or another he has raised these
5 before and your Honor has I think basically said that there is
6 no evidence in the record anywhere of any of these
7 unsubstantiated claims.

8 To the extent they haven't been raised before
9 obviously this is not the appropriate time to raise them but I
10 think more importantly in the multitude of hearings and
11 conferences and arguments and of course from the trial itself,
12 there is obviously no evidence in the record of any of these
13 paranoid claims on the defendant's part. And they are totally
14 extraneous to the issues related to trial and his conviction
15 and his sentencing.

16 THE COURT: All right.

17 Is there anything else you wish to raise today?

18 Maybe you should listen to your lawyer as to what is
19 appropriate to be raising at your sentencing and what are
20 matters which are not appropriate.

21 Have you talked to him, Mr. Siegel, at all about
22 bringing common sense and reason to him as a client of yours?

23 MR. SIEGEL: Your Honor, without obviously divulging
24 attorney-client communications, the defendant and I have had
25 many, many conversations about how the matter should proceed.

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1 But I think the defendant feels that it should be proceeding in
2 a particular manner. He has prepared a written statement to
3 the court which he is reading right now and the defendant is
4 the captain of his ship.

5 THE COURT: He is his own lawyer.

6 MR. SIEGEL: If the court wishes to view that ship as
7 the Titanic, that is something else, but the defendant is
8 prepared and he has written a statement and he has certain
9 positions about the conduct of the prosecution and the agents
10 involved in this case.

11 THE COURT: Well, the lawyer representing as standby
12 counsel his son raised the issue that he has never in his
13 considerable experience as a criminal defense lawyer had a
14 client that hurt himself more post conviction by his conduct
15 than his son did.

16 I hate to see the same thing happening with his father
17 but he doesn't seem to listen to anyone and he has his own mind
18 of how he wants to handle things and there are things that
19 should be raised and there are things that are extraneous and
20 are not appropriate at the time of his sentence. He has the
21 chance to appeal with respect to the matters that have happened
22 and my rulings in connection with them, but we have to move
23 ahead. We have reached the point where unless the government
24 tells me they are matters that are concerning the government
25 and that are matters that I should take into consideration, we

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1 have to move ahead.

2 What does the government say?

3 MS. ROCAH: Your Honor, the government has no reason
4 whatsoever to delay the sentencing.

5 THE COURT: All right. If he has a statement that he
6 has prepared he might want to hand it in as an exhibit and it
7 will be part of the record on appeal. Otherwise he can read it
8 if he wishes to.

9 Why don't you talk to him, Mr. Siegel, as to the best
10 way to proceed now. He seems to be bringing up matters that
11 shouldn't be considered at the time of the sentencing but he
12 has done this before, and he is doing it again.

13 Why don't you talk to him and see how you recommend he
14 proceed.

15 MR. SIEGEL: Your Honor, I know he has prepared a
16 statement. The statement is not in English. It's in Turkish.
17 I don't think it's all that lengthy. I think he has read most
18 of it. I would suggest we just proceed.

19 THE COURT: All right, why don't we proceed.

20 THE DEFENDANT: I would like to remind only one thing
21 to your Honor. The witness named Mabrouk, who is a cooperating
22 witness, and the case agent Campanella and the prosecutor, Ms.
23 Rocah, and in my case with Judge Wood the case agent is
24 Campanella and the prosecutors are Southwell and Rocah.

25 That is it, thank you.

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1 THE INTERPRETER: I think he wanted to point out that
2 the both people were involved in both cases.

3 THE DEFENDANT: Thank you very much.

4 THE COURT: He has completed his comments.

5 Does the government want to add anything more based on
6 what he said?

7 MS. ROCAH: I wanted to address a couple of things
8 raised by Mr. Siegel and the defendant just for clarity of the
9 record. I will be very brief. First of all -- not raised by
10 Mr. Siegel but raised by the defendant in his last letter which
11 the government did not respond to in writing. One of claims
12 was that there was substantial assistance on his part to the
13 government. I just want to say for the record that there was
14 absolutely no substantial assistance by the defendant. The
15 government has never credited any information that this
16 defendant has attempted at times to send in incoherent letters
17 to the government. They have never acted on it. They have
18 never used it. There is just no substantial assistance
19 whatsoever that has led to any FBI or other agency cases.

20 Most of these issues we have been over again and again
21 and as your has pointed out, the defendant will have a chance
22 to appeal and the record will speak for itself. This issue
23 about the tampering with the CD and the sealing of the
24 envelope, the FBI envelope in which the CD was contained which
25 marks each time that the CD was taken in and out of evidence

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1 for proffer purposes, for what purpose it was taken in and out,
2 is in evidence as a Government exhibit. The government
3 produced a copy of that to the defendant as he requested. It
4 wasn't the first time he has seen it as he is claiming now
5 because it was also available at trial. The dates on that will
6 speak for itself. The defendant's claims about there being a
7 lapse in time are just frivolous. And I hate to even credit
8 them with any response but I am just trying to give a little
9 bit of clarity to the record for the appeal.

10 The issue about the concurrent versus consecutive
11 time, I believe Mr. Siegel is correct that it's mandatory but
12 under the guidelines it's mandatory that it be consecutive and
13 obviously the guidelines are advisory. The government would
14 request, however, that guidelines or no guidelines that this
15 court impose a consecutive sentence because this crime, which
16 is obviously extremely serious in nature, was completely
17 separate from the first case which he was tried before Judge
18 Wood, which was a fraud identity theft, a large one, in which,
19 by the way, I was not involved in. I was not a prosecutor in
20 the case. That was only Mr. Southwell. But, in any event, the
21 defendant clearly should be punished separately for those two
22 cases because one has absolutely nothing to do with the other
23 and it makes the crime that he committed here substantially
24 more serious that he was able to commit it and attempt to
25 commit such a serious crime from prison while facing trial

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1 before another judge in this courthouse.

2 I guess the last thing that I just wanted to address,
3 and we can talk about this after your Honor imposes sentence,
4 but the request that the defendant be imprisoned with his son
5 and his request that he be held here for a certain amount of
6 time and all of his various demands about that, obviously as
7 your Honor pointed out the court can make recommendations. The
8 government doesn't usually take a position on such things,
9 although I will say in this case I think that the Bureau of
10 Prisons already is aware and will be made further aware that
11 the very nature of this crime here had to do with the son and
12 the father conspiring together and that the government's belief
13 is when the two of them are together they present a much
14 greater danger to society, not to mention to FBI agents and
15 prosecutors who are responsible for them being in jail. And so
16 while we normally don't take a position I think here we would
17 recommend to the Bureau of Prisons that they be separated and
18 my understanding is that the Bureau of Prisons will be doing
19 that based on the nature of the crime here.

20 THE COURT: How about him getting yet another lawyer
21 appointed which he is requesting as appellate counsel who would
22 have to familiarize herself with the entire record at taxpayer
23 expense?

24 MS. ROCAH: Your Honor, it seems indulgent in a way
25 that the government obviously would not recommend. However, I

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1 hesitate to take a position only because I believe Mr. Siegel
2 is actually going to be making a motion to have himself removed
3 and so I will let Mr. Siegel and the court speak to that. We
4 do think it's a bit wasteful at this point.

5 THE COURT: I would be remiss if I didn't express my
6 appreciation to the standby counsel for both the father and son
7 and the diligent way they went about their work and tried to be
8 of assistance to their clients. Mr. Siegel is to be
9 complimented for the time and effort that he has put into
10 representing Mustafa even though, as he rightly said,
11 attorney-client privilege is such that he should not be asked
12 to comment on his representation and his conversations. But I
13 do want to commend him for what I have noticed here in court of
14 his patience and his wanting to help his client, as was true in
15 Mustafa's son's case too. So it's a credit to the CJA panel
16 that lawyers of your quality are available and make the efforts
17 you do. I am very impressed by the way you went about, Mr.
18 Siegel, your representation of Mustafa. But I will hear from
19 you.

20 MR. SIEGEL: Thank you very much. I appreciate those
21 comments, your Honor, truly I do, as a member of the bar and as
22 an individual.

23 While Ms. Rocah was speaking, the defendant handed me
24 Government Exhibit 25 and he likely wants to make mention of
25 page 3 of that exhibit. Apparently there is a comment, and

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1 again I am just reflecting what he wants on the record, but
2 apparently there were conversations mentioned on page 3 of that
3 document where there appear to be people speaking Arabic and I
4 believe the conversations here were in Turkish, which is an
5 entirely different language than Arabic.

6 In addition, your Honor, based upon my representation
7 of the defendant all along, I am going to make an application
8 to be relieved at this point after the notice of appeal is
9 filed and I think Ms. Fink might be willing to take over the
10 case. I think based upon my representation of Mr. Ozsusamlar
11 and his feelings about having new counsel, I think it's
12 probably in everybody's best interest that after this
13 proceeding that the court allow me to be relieved as counsel.

14 THE COURT: All right. I will take that under
15 advisement but the government isn't opposing your application,
16 as I understand it.

17 MS. ROCAH: That is correct, your Honor.

18 THE COURT: And we don't know at this point whether
19 Ms. Fink has been contacted and has indicated a willingness to
20 proceed.

21 Does the government know?

22 MS. ROCAH: I have no idea, your Honor. I hadn't
23 heard about that until today.

24 MR. SIEGEL: Just bear with me, your Honor.

25 (Pause)

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1 MR. SIEGEL: I don't think the defendant has spoken to
2 Ms. Fink, your Honor.

3 THE COURT: I think it's appropriate, Mr. Siegel,
4 based on all of your time and effort and conscientious work on
5 behalf of your client, that the court grant your application as
6 soon as new counsel is appointed.

7 Would this be standby counsel or appellate counsel?
8 You might talk to your client to find out the role of the
9 replaced counsel.

10 MR. SIEGEL: I think he indicated this would be
11 appellate counsel, your Honor.

12 THE COURT: All right. So that we will move ahead
13 with that consideration, but you will remain as counsel until
14 we do have a person in place --

15 MR. SIEGEL: Yes, your Honor.

16 THE COURT: -- representing Mustafa.

17 I think at this point, as time has gone by, I hoped
18 maybe to give the sentence, which isn't going to be that long.
19 We only have about an hour more but I think probably with the
20 time being what it is, we all should proceed after lunch
21 because otherwise I may not be through by 1 o'clock at this
22 point.

23 Are counsel available if we take our lunch recess now
24 and complete the matter within about an hour?

25 MR. SIEGEL: Yes, your Honor, that is fine with me.

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1 THE COURT: How about government counsel?

2 MS. ROCAH: Your Honor, I have some things scheduled
3 this afternoon. I can try to move them. I didn't know we were
4 coming back after lunch.

5 THE COURT: I will go ahead. Why don't I see how we
6 go. There isn't that much left.

7 I am not going to request that counsel stand with his
8 client during this period as we do sometimes because I think
9 it's good for you both to be seated and, Mr. Mustafa, feel free
10 to talk to your lawyer as we proceed to the extent you want to
11 get advice.

12 Subdivision V. Determination of defendant's sentence.

13 Subdivision A. Calculation of the guideline range.

14 I will now discuss the court's determination of
15 defendant's sentence. First, I will explain the calculation of
16 the guidelines range.

17 Probation found that defendant's criminal history
18 category is IV and total offense level is 33. Under the plain
19 language of Section 3D1.2 of the guidelines, however, 32 is the
20 appropriate total offense level. Though defendant did not
21 raise this point in his sentencing memoranda, the court will
22 apply the same reduction in offense level to Mustafa as it
23 applied to his co-defendant, Osman Ozsusamlar. The relevant
24 guidelines provision states that counts involving
25 "substantially the same harm shall be grouped together into a

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1 single group." U.S.S.G. Section 3D1.2. In defining the
2 phrase "substantially the same harm," the guidelines specify
3 that" counts involve substantially the same harm within the
4 meaning of Section 3D1.2 (a) when counts involve the same
5 victim and the same act or transaction." (U.S.S.G. Section
6 3D1.2.) There is no question here that all three counts
7 involved the same victim and the same act or transaction. As I
8 stated earlier, in categorizing Count 3 -- conspiracy to commit
9 extortion in violation of 18 U.S.C. 951 -- as a separate group,
10 probation recommended various enhancements. Because the three
11 counts in this case should be grouped together as one, a
12 detailed analysis of these recommended enhancements is
13 unnecessary. Thus, the appropriate total offense level is 32.

14 The guidelines provision for a total offense level of
15 32 and a criminal history category of IV is a term of 168-210
16 months imprisonment.

17 Defendant asks the court to consider a departure under
18 section 5K.1 of the guidelines, which allows for a departure
19 "upon motion of the government stating that the defendant has
20 provided substantial assistance in the investigation or
21 prosecution of another person who has committed an offense . .
22 . . " U.S.S.G. Section 5K1.1. The government has made no such
23 motion here. Further, while Mustafa states that he gave
24 information to prosecutors in 2001, he fails to provide any
25 detail relating to such assistance. The court therefore has no

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1 reason to depart from the applicable guidelines range.

2 B. Consideration of Section 3553(a) factors.

3 As I am obligated to do following Booker and Crosby, I
4 turn now to consideration of the Section 3553(a) factors. As I
5 stated earlier, Mustafa asks the court to sentence him "to a
6 term that reflects that no one was actually threatened, harmed
7 or injured." (Defendant's 10/9 memo at 4.) Mustafa
8 additionally informs the court of a few acts of community
9 service. (Defendant's 10/ 19 memo at 5.) These points
10 implicate Section 3553(a)(1), which obligates the court to
11 consider the "nature and circumstances of the offense and the
12 history and characteristics of the defendant," and Section
13 3553(a)(2)(A), which requires that the sentence imposed reflects
14 the seriousness of the offense. The facts relevant under
15 Section 3553(a) do not weigh in favor of imposing a
16 non-guideline sentence. Mustafa's criminal history
17 demonstrates that he is unlikely to abide by the law and that
18 he poses a significant threat to the public. Here, Mustafa
19 orchestrated a scheme from prison, using his son Osman, to have
20 a man and his wife killed over a debt of less than \$300,000.
21 Despite the fact that no one was ultimately harmed, this
22 certainly is a serious offense, and points to Mustafa's
23 continued inability to abide by the law.

24 C. Other considerations.

25 Mustafa also asks for this court's sentence to run

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1 concurrently to the sentence imposed by Chief Judge Wood in
2 United States v. Ozoglu et al., 02 Cr. 763. Mustafa's
3 conviction in the instant matter is for conspiracy to commit a
4 murder for hire, murder for hire, and conspiracy to commit
5 extortion, all of which occurred while he was serving a term of
6 imprisonment for another offense. Under such circumstances,
7 the guidelines provide that "the sentence for the instant
8 offense shall be imposed to run consecutively to the
9 undischarged term of imprisonment." U.S.S.G. Section 5G1.3A.
10 However, 18 U.S.C. Section 3584 gives the court some discretion
11 to impose a concurrent sentence after weighing the factors
12 listed in 18 U.S.C. Section 3553(a). See United States v.
13 Perez, 328 F.3d 96, 97 (2d Cir. 2003) ("the courts of appeals
14 that have considered the matter now agree that U.S.S.G. Section
15 5G1.3A and 18 U.S.C. Section 3584 are not in conflict, and that
16 the consecutive sentence mandate of Section 5G1.3A precludes
17 concurrent sentencing except insofar as the sentencing judge
18 identifies grounds for a downward departure."). As I
19 previously discussed, the Section 3553(a) factors present in
20 this case do not weigh in defendant's favor. Thus, today's
21 sentence will run consecutively to the sentence imposed by
22 Chief Judge Wood.

23 D. Imposition of a reasonable sentence.

24 Under Second Circuit precedent, the final step in the
25 post Booker/Crosby sentencing environment is the imposition of

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1 a reasonable sentence. Fernandez, 443 F.3d at 26. Under this
2 consideration, a court reviewing whether a sentence is
3 reasonable does so not only by looking at the sentence itself,
4 "but also at the procedures employed in arriving at the
5 sentence." Id. at 26 (citing United States v. Crosby, 397
6 F.3d 103, 114 (2d Cir. 2005) (Newman, J.); see also United
7 States v. Selioutsky, 409 F.3d 114, 118 (2d Cir. 2005)). The
8 review of a sentence for reasonableness is "akin to review for
9 abuse of discretion." Fernandez, 443 F.3d at 27. Therefore,
10 a sentence will be unreasonable only where the judge imposing
11 it has "exceeded the bounds of allowable discretion, . . .
12 committed an error of law in the course of exercising
13 discretion, or made a clearly erroneous finding of fact." Id.
14 (citing Crosby, 397 F.3d at 114).

15 Further, the Fernandez court "declined to establish a
16 presumption, rebuttable or otherwise, that a guidelines
17 sentence is reasonable." Id. However, it did hold that in
18 the "overwhelming majority of cases" a guidelines sentence will
19 fall well within the range of sentences that will be considered
20 reasonable. Given that no mitigating factors apply to Mustafa,
21 imposing a sentence below the guideline range would be
22 unreasonable as "exceeding the bounds of allowable discretion."

23 Based on the considerations that I have already
24 stated, the court finds that Mustafa's criminal history
25 category is IV and his offense level is 32. This corresponds

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1 to an advisory sentence range of 168-210 months.

2 Based on the written submissions as well as
3 consideration of the parties' statements today, the court
4 hereby sentences the defendant to 188 months in prison,
5 consisting of the statutory maximum 120 months for Counts 1 and
6 2, to run concurrently, and 68 months for Count 3, to run
7 consecutively. The total punishment of 188 months imprisonment
8 is to be followed by 3 years of supervised release. This
9 sentence is to run consecutively to the 235-month sentence
10 imposed by Chief Judge Kimba Wood in United States v. Ozoglu et
11 al., 02 Cr. 763.

12 The court accepts probation's recommendation that
13 defendant's fine be waived because he is subject to a \$20,000
14 fine imposed by Chief Judge Wood. The defendant is ordered to
15 pay an immediate special assessment of \$300 (\$100 per count) to
16 the United States pursuant to 18 U.S.C. Section 3013. The
17 court accepts all other mandatory conditions of incarceration
18 recommended by probation in the PSR.

19 It's probably useful if I actually read those
20 mandatory conditions and the standard conditions from pages 21
21 to 22 of the PSR.

22 Mandatory conditions: If a period of
23 probation/supervised release is ordered, the following
24 conditions are mandatory: The defendant shall not commit
25 another federal, state or local crime. The defendant shall not

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1 illegally possess a controlled substance. The defendant shall
2 not possess a firearm or destructive device.

3 The mandatory drug testing condition is suspended
4 based on the court's determination that the defendant poses a
5 low risk of future substance abuse.

6 The defendant shall cooperate in the collection of DNA
7 as directed by the probation officer.

8 Standard and special conditions.

9 The standard conditions of supervision 1-13 will apply
10 in this case with the following special conditions:

11 1. The defendant shall obey the immigration laws and
12 comply with the directives of immigration authorities.

13 The defendant is to report to the nearest probation
14 office within 72 hours of release from custody. If the
15 defendant is sentenced to any period of supervision, it is
16 recommended that the defendant be supervised by the district of
17 residence.

18 Now, the requests made during these proceedings, other
19 than what I have already covered, I will indicate for the
20 Bureau of Prisons to consider having the defendant incarcerated
21 as close to New York City as possible.

22 I do not recommend that he be incarcerated in the same
23 facility as his son for the reasons stated here by the
24 government today. Efforts will be made to obtain appellate
25 counsel to represent the defendant on appeal, and to be

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1 appointed as appellate counsel.

2 I will ask Mr. Siegel to be sure that the time does
3 not run from filing a notice of appeal while he still is
4 representing him since we don't know how long it will take for
5 him to have appellate counsel in place.

6 I will leave it up to appellate counsel whether or not
7 a request will be made to have a detective assigned in
8 connection with considerations of the appeal and the government
9 may or may not oppose that application depending on the reasons
10 given.

11 Anything else that the government would want me to add
12 to that?

13 MS. ROCAH: No, your Honor.

14 This is implicit in what you said, but the defendant
15 obviously needs to be advised of his right to appeal also.

16 THE COURT: Yes.

17 MR. SIEGEL: Your Honor, I know that when the
18 defendant said he wanted a detective appointed, I think
19 probably the appropriate translation would be investigator as
20 opposed to a detective.

21 THE COURT: All right.

22 MR. SIEGEL: What I will do is once we conclude this
23 session today, I will immediately go down and file a notice of
24 appeal on his behalf.

25 The only thing is while the court was reading the

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1 decision in and knowing what the sentence would be, I inquired
2 of the defendant whether he wished -- and I know sometimes this
3 can be arranged -- whether he wanted to serve his sentence here
4 or in Turkey and he indicated that he wished to serve his
5 sentence here in the United States as opposed to serve the
6 sentence in Turkey, and I guess having seen the old movie
7 *Midnight Express* I can appreciate why he would want to serve it
8 in this country as opposed to Turkey.

9 THE COURT: Well, that issue isn't before the court.

10 MR. SIEGEL: I understand, your Honor. But I just
11 wanted to raise this. I did advise or find out whether he
12 wanted that recommendation to be made and he does not want it
13 to be made.

14 THE COURT: Does the government think that should be
15 included?

16 MS. ROCAH: No.

17 THE COURT: I don't think it's an issue.

18 MR. SIEGEL: Okay.

19 Your Honor, just before the court --

20 THE COURT: But needless to say if I am wrong on that
21 and unexpectedly the Bureau of Prisons indicates that he should
22 be serving his sentence in Turkey, there should be an
23 application made to me in that regard and I will consider what
24 you are saying here today at that point.

25 MR. SIEGEL: As I said, the defendant said he does not

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1 wish to serve his sentence in Turkey.

2 Just one other thing before the the sentence is
3 imposed. I would like to point out that if the court does in
4 fact impose a consecutive sentence upon the defendant,
5 according to my preliminary calculations, he probably will be
6 approximately 95 years old before he would be released and,
7 again, I would ask the court to reconsider whether based
8 upon -- it would effectively become a life sentence for the
9 defendant, and whether the court would reconsider and impose
10 your sentence as a concurrent as opposed to a consecutive
11 sentence.

12 THE COURT: I have fully considered the amount of time
13 involved, the seriousness of the offenses, and all the other
14 factors and the sentence I imposed was having those
15 considerations in mind, so I need not reconsider. I did impose
16 the sentence with those considerations in mind.

17 Anything else the government wished me to consider?

18 MS. ROCAH: No, not to consider, your Honor.

19 MR. SIEGEL: If the court would bear with me for one
20 moment, your Honor.

21 (Pause)

22 THE COURT: I think formally I should advise the
23 defendant, as the government suggested, that you have a right
24 to appeal and I understand your standby counsel is going to
25 actually file a notice of appeal. But the government is

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1 correct in requesting that I actually advise you of your right
2 to appeal since if a notice of appeal is not filed, you will
3 waive that right.

4 MR. SIEGEL: If the court will bear with me for one
5 moment, I think the defendant would like to tell me something.

6 (Pause)

7 MR. SIEGEL: Your Honor, the defendant has a technical
8 question and the defendant would like to know when for
9 computation purposes, when does your sentence begin to run?
10 Does it run from when the crime occurred, which was sometime in
11 October, September-October 2005, or does it run or commence
12 from a later time?

13 THE COURT: It may well be that as soon as he was
14 arrested and he was in custody the time started to run. Maybe
15 the government can tell us.

16 MS. ROCAH: Obviously this is a calculation that the
17 Bureau of Prisons will do and I suppose if the defendant has
18 objections to their calculations he can raise it then since
19 sitting here now we don't know what it will be. It's something
20 done by the Bureau of Prisons. But my understanding is he was
21 in custody on the previous conviction and so I am not sure if
22 he would have received credit yet on this sentence but I don't
23 really want to speculate because it's a Bureau of Prison's
24 calculation.

25 Your Honor, I am sorry, I would hate for there to be

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1 any technicalities. I believe the defendant should also be
2 advised that as to his right to appeal, he has to do it within
3 ten days from the entry of judgment.

4 THE COURT: That is correct.

5 MS. ROCAH: I know his lawyer indicated he is going to
6 file it today so it's not an issue.

7 THE COURT: It's correct that such a statement is
8 appropriate to be made and I make it. It has to be within ten
9 days of when judgment is filed by this court. There is that
10 time limitation.

11 There are so many matters that have been raised, I
12 want to be sure I cover them all. To make it clear, he
13 continues to raise issues about tampering, which seems to be an
14 endless process on his part. I have already ruled with respect
15 to these considerations.

16 To the extent he is adding or embellishing on those
17 considerations it's my same ruling with respect to it not being
18 a matter to be considered at sentencing and he does have the
19 right to appeal with respect to all my rulings. And to the
20 extent I haven't specifically denied any of his other requests
21 here, I do deny them to the extent I haven't already done it.

22 Anything else?

23 MS. ROCAH: No, your Honor, not from the government.

24 MR. SIEGEL: No, your Honor.

25 THE COURT: Thank you for your patience.

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1 MS. ROCAH: Thank you, your Honor.

2 MR. SIEGEL: Thank you, your Honor.

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